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17 ATARI INTERACTIVE, INC.

18 **IN THE UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION**

21 ATARI INTERACTIVE, INC.,)	Case No. 2:19-CV-0608-CAS (AFMx)
22 Plaintiff,)	Hon. Alexander F. MacKinnon
23 v.)	
24 HYPERKIN INC.,)	PROPOSED STIPULATED
25 Defendant.)	PROTECTIVE ORDER¹

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27
28 ¹ This Stipulated Protective Order is based substantially on the model
protective order provided under Magistrate Judge MacKinnon's Procedures.

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
6 to enter the following Stipulated Protective Order. The parties acknowledge that
7 this Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve trade secrets, customer and pricing lists and
13 other valuable research, development, commercial, financial, technical and/or
14 proprietary information for which special protection from public disclosure and
15 from use for any purpose other than prosecution of this action is warranted. Such
16 confidential and proprietary materials and information consist of, among other
17 things, confidential business or financial information, information regarding
18 confidential business practices, or other confidential research, development, or
19 commercial information (including information implicating privacy rights of
20 third parties), information otherwise generally unavailable to the public, or which
21 may be privileged or otherwise protected from disclosure under state or federal
22 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
23 flow of information, to facilitate the prompt resolution of disputes over
24 confidentiality of discovery materials, to adequately protect information the
25 parties are entitled to keep confidential, to ensure that the parties are permitted
26 reasonable necessary uses of such material in preparation for and in the conduct
27 of trial, to address their handling at the end of the litigation, and serve the ends of
28 justice, a protective order for such information is justified in this matter. It is the

1 intent of the parties that information will not be designated as confidential for
2 tactical reasons and that nothing be so designated without a good faith belief that
3 it has been maintained in a confidential, non-public manner, and there is good
4 cause why it should not be part of the public record of this case.

5 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
6 SEAL

7 The parties further acknowledge, as set forth in Section 12.3, below, that
8 this Stipulated Protective Order does not entitle them to file confidential
9 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
10 be followed and the standards that will be applied when a party seeks permission
11 from the court to file material under seal.

12 There is a strong presumption that the public has a right of access to judicial
13 proceedings and records in civil cases. In connection with non-dispositive
14 motions, good cause must be shown to support a filing under seal. *See Kamakana*
15 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
16 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
17 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
18 protective orders require good cause showing), and a specific showing of good
19 cause or compelling reasons with proper evidentiary support and legal
20 justification, must be made with respect to Protected Material that a party seeks
21 to file under seal. The parties' mere designation of Disclosure or Discovery
22 Material as CONFIDENTIAL does not— without the submission of competent
23 evidence by declaration, establishing that the material sought to be filed under
24 seal qualifies as confidential, privileged, or otherwise protectable—constitute
25 good cause.

26 Further, if a party requests sealing related to a dispositive motion or trial,
27 then compelling reasons, not only good cause, for the sealing must be shown, and
28 the relief sought shall be narrowly tailored to serve the specific interest to be

protected. *See Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal in connection with a dispositive motion or trial, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: *Atari Interactive, Inc. v. Hyperkin Inc.*, Case No. 2:19-cv-00608 CAS (AFMx).

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY”.

3 2.6 Disclosure or Discovery Material: all items or information,
4 regardless of the medium or manner in which it is generated, stored, or maintained
5 (including, among other things, testimony, transcripts, and tangible things), that
6 are produced or generated in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a
8 matter pertinent to the litigation who (1) has been retained by a Party or its counsel
9 to serve as an expert witness or as a consultant in this Action, (2) is not a past or
10 current employee of a Party or of a Party’s competitor, and (3) at the time of
11 retention, is not anticipated to become an employee of a Party or of a Party’s
12 competitor.

13 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
14 Information or Items: extremely sensitive “Confidential Information or Items,”
15 disclosure of which to another Party or Non-Party would create a substantial risk
16 of serious harm that could not be avoided by less restrictive means.

17 2.9 House Counsel: attorneys who are employees of a party to this
18 Action. House Counsel does not include Outside Counsel of Record or any other
19 outside counsel.

20 2.10 Non-Party: any natural person, partnership, corporation, association
21 or other legal entity not named as a Party to this action.

22 2.11 Outside Counsel of Record: attorneys who are not employees of a
23 party to this Action but are retained to represent or advise a party to this Action
24 and have appeared in this Action on behalf of that party or are affiliated with a
25 law firm that has appeared on behalf of that party, and includes support staff.

26 2.12 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and
28 their support staffs).

1 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.14 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits
5 or demonstrations, and organizing, storing, or retrieving data in any form or
6 medium) and their employees and subcontractors.

7 2.15 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY.”

10 2.16 Receiving Party: a Party that receives Disclosure or Discovery
11 Material from a Producing Party.

12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only
14 Protected Material (as defined above), but also (1) any information copied or
15 extracted from Protected Material; (2) all copies, excerpts, summaries, or
16 compilations of Protected Material; and (3) any testimony, conversations, or
17 presentations by Parties or their Counsel that might reveal Protected Material.

18 Any use of Protected Material at trial shall be governed by the orders of the
19 trial judge. This Order does not govern the use of Protected Material at trial.

20 4. DURATION

21 Once a case proceeds to trial, information that was designated as
22 CONFIDENTIAL or maintained pursuant to this protective order used or
23 introduced as an exhibit at trial becomes public and will be presumptively
24 available to all members of the public, including the press, unless compelling
25 reasons supported by specific factual findings to proceed otherwise are made to
26 the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81
27 (distinguishing “good cause” showing for sealing documents produced in
28 discovery from “compelling reasons” standard when merits-related documents

are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial

1 proceedings), that the Producing Party affix at a minimum, the legend
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
3 ONLY” to each page that contains protected material. If only a portion of the
4 material on a page qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate markings in the
6 margins).

7 A Party or Non-Party that makes original documents available for
8 inspection need not designate them for protection until after the inspecting Party
9 has indicated which documents it would like copied and produced. During the
10 inspection and before the designation, all of the material made available for
11 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY.” After the inspecting Party has identified the documents it wants
13 copied and produced, the Producing Party must determine which documents, or
14 portions thereof, qualify for protection under this Order. Then, before producing
15 the specified documents, the Producing Party must affix the appropriate
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” legend to each page that contains Protected Material. If only a portion or
18 portions of the material on a page qualifies for protection, the Producing Party
19 also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins) and must specify, for each portion, the level of
21 protection being asserted.

22 (b) for testimony given in deposition or in other pretrial or trial
23 proceedings, that the Designating Party identify on the record, before the close of
24 the deposition, hearing, or other proceeding, all protected testimony and specify
25 the level of protection being asserted. When it is impractical to identify separately
26 each portion of testimony that is entitled to protection and it appears that
27 substantial portions of the testimony may qualify for protection, the Designating
28 Party may invoke on the record (before the deposition, hearing, or other

1 proceeding is concluded) a right to have up to 21 days to identify the specific
2 portions of the testimony as to which protection is sought and to specify the level
3 of protection being asserted. Only those portions of the testimony that are
4 appropriately designated for protection within the 21 days shall be covered by the
5 provisions of this Stipulated Protective Order. Alternatively, a Designating Party
6 may specify, at the deposition or up to 21 days afterwards if that period is properly
7 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a
10 deposition, hearing or other proceeding to include Protected Material so that the
11 other parties can ensure that only authorized individuals who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
13 proceedings. The use of a document as an exhibit at a deposition shall not in any
14 way affect its designation as “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 Transcripts containing Protected Material shall have an obvious legend on
17 the title page that the transcript contains Protected Material, and the title page
18 shall be followed by a list of all pages (including line numbers as appropriate)
19 that have been designated as Protected Material and the level of protection being
20 asserted by the Designating Party. The Designating Party shall inform the court
21 reporter of these requirements. Any transcript that is prepared before the
22 expiration of a 21-day period for designation shall be treated during that period
23 as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
24 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that
25 period, the transcript shall be treated only as actually designated.

26 (c) for information produced in some form other than documentary
27 and for any other tangible items, that the Producing Party affix in a prominent
28 place on the exterior of the container or containers in which the information or

1 item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information
3 warrants protection, the Producing Party, to the extent practicable, shall identify
4 the protected portion(s) and specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive
7 the Designating Party’s right to secure protection under this Order for such
8 material. Upon timely correction of a designation, the Receiving Party must make
9 reasonable efforts to assure that the material is treated in accordance with the
10 provisions of this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37-1 et seq.

17 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via
18 a joint stipulation pursuant to Local Rule 37-2.

19 6.4 The burden of persuasion in any such challenge proceeding shall be
20 on the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party’s designation until the Court rules on the
26 challenge.

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that
3 is disclosed or produced by another Party or by a Non-Party in connection with
4 this Action only for prosecuting, defending or attempting to settle this Action.
5 Such Protected Material may be disclosed only to the categories of persons and
6 under the conditions described in this Order. When the Action has been
7 terminated, a Receiving Party must comply with the provisions of section 13
8 below (FINAL DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at
10 a location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party,
14 a Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Outside Counsel of Record in this Action,
17 as well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

19 (b) the officers, directors, and employees (including House Counsel)
20 of the Receiving Party to whom disclosure is reasonably necessary for this Action
21 and who have signed the “Acknowledgment and Agreement to Be Bound”
22 (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this Action and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (d) the court and its personnel;

27 (e) court reporters and their staff;

1 (f) professional jury or trial consultants and Professional Vendors to
2 whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information
5 or a custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses,
7 in the Action to whom disclosure is reasonably necessary provided: (1) the
8 deposing party requests that the witness sign the form attached as Exhibit 1
9 hereto; and (2) they will not be permitted to keep any confidential information
10 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
11 A), unless otherwise agreed by the Designating Party or ordered by the court.
12 Pages of transcribed deposition testimony or exhibits to depositions that reveal
13 Protected Material may be separately bound by the court reporter and may not be
14 disclosed to anyone except as permitted under this Stipulated Protective Order;
15 and

16 (i) any mediator or settlement officer, and their supporting
17 personnel, mutually agreed upon by any of the parties engaged in settlement
18 discussions.

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
21 in writing by the Designating Party, a Receiving Party may disclose any
22 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this action,
25 as well as employees of said Outside Counsel of Record to whom it is reasonably
26 necessary to disclose the information for this litigation;

27 (b) Experts of the Receiving Party (1) to whom disclosure is
28 reasonably necessary for this litigation, (2) who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as long as
2 the Expert is not a current officer, director, employee, or ordinary-course-of-
3 business contractor of a Party or of a competitor of a Party or anticipated to
4 become one;

5 (c) the court and its personnel;

6 (d) court reporters and their staff, professional jury or trial
7 consultants, mock jurors, and Professional Vendors to whom disclosure is
8 reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

10 (e) the author or recipient of a document containing the information
11 or a custodian or other person who otherwise possessed or knew the information.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
13 PRODUCED IN OTHER LITIGATION

14 If a Party is served with a subpoena or a court order issued in other litigation
15 that compels disclosure of any information or items designated in this Action as
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY” that Party must:

18 (a) promptly notify in writing the Designating Party. Such
19 notification shall include a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or
21 order to issue in the other litigation that some or all of the material covered by the
22 subpoena or order is subject to this Protective Order. Such notification shall
23 include a copy of this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be
25 pursued by the Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served
27 with the subpoena or court order shall not produce any information designated in
28 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" before a determination by the court from which
2 the subpoena or order issued, unless the Party has obtained the Designating
3 Party's permission. The Designating Party shall bear the burden and expense of
4 seeking protection in that court of its confidential material and nothing in these
5 provisions should be construed as authorizing or encouraging a Receiving Party
6 in this Action to disobey a lawful directive from another court.

7 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
8 PRODUCED IN THIS LITIGATION

9 (a) The terms of this Order are applicable to information produced
10 by a Non-Party in this Action and designated as "CONFIDENTIAL" or
11 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such
12 information produced by Non-Parties in connection with this litigation is
13 protected by the remedies and relief provided by this Order. Nothing in these
14 provisions should be construed as prohibiting a Non-Party from seeking
15 additional protections.

16 (b) In the event that a Party is required, by a valid discovery request,
17 to produce a Non-Party's confidential information in its possession, and the Party
18 is subject to an agreement with the Non-Party not to produce the Non-Party's
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the
21 Non-Party that some or all of the information requested is subject to a
22 confidentiality agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the
24 Stipulated Protective Order in this Action, the relevant discovery request(s), and
25 a reasonably specific description of the information requested; and

26 (3) make the information requested available for inspection by
27 the Non-Party, if requested.
28

1 (c) If the Non-Party fails to object or seek a protective order from
2 this court within 14 days of receiving the notice and accompanying information,
3 the Receiving Party may produce the Non-Party's confidential information
4 responsive to the discovery request. If the Non-Party timely seeks a protective
5 order, the Receiving Party shall not produce any information in its possession or
6 control that is subject to the confidentiality agreement with the Non-Party before
7 a determination by the court. Absent a court order to the contrary, the Non-Party
8 shall bear the burden and expense of seeking protection in this court of its
9 Protected Material.

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has
12 disclosed Protected Material to any person or in any circumstance not authorized
13 under this Stipulated Protective Order, the Receiving Party must immediately (a)
14 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
15 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
16 inform the person or persons to whom unauthorized disclosures were made of all
17 the terms of this Order, and (d) request such person or persons to execute the
18 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
19 A.

20 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
21 PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other
24 protection, the obligations of the Receiving Parties are those set forth in Federal
25 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
26 whatever procedure may be established in an e-discovery order that provides for
27 production without prior privilege review. Pursuant to Federal Rule of Evidence
28 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure

1 of a communication or information covered by the attorney-client privilege or
2 work product protection, the parties may incorporate their agreement in the
3 stipulated protective order submitted to the court.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of
6 any person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order, no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in
10 this Stipulated Protective Order. Similarly, no Party waives any right to object on
11 any ground to use in evidence of any of the material covered by this Protective
12 Order.

13 12.3 Filing Protected Material. Without written permission from the
14 Designating Party or a court order secured after appropriate notice to all interested
15 persons, a Party may not file in the public record in this action any Protected
16 Material. A Party that seeks to file under seal any Protected Material must comply
17 with Local Civil Rule 79-5. Protected Material may only be filed under seal
18 pursuant to a court order authorizing the sealing of the specific Protected Material
19 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
20 request establishing that the Protected Material at issue is privileged, protectable
21 as a trade secret, or otherwise entitled to protection under the law. If a Receiving
22 Party's request to file Protected Material under seal pursuant to Civil Local Rule
23 79-5(e) is denied by the court, then the Receiving Party may file the information
24 in the public record unless otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in Section 4, within 60
27 days of a written request by the Designating Party, each Receiving Party must
28 return all Protected Material to the Producing Party or destroy such material. As

1 used in this subdivision, "all Protected Material" includes all copies, abstracts,
2 compilations, summaries, and any other format reproducing or capturing any of
3 the Protected Material. Whether the Protected Material is returned or destroyed,
4 the Receiving Party must submit a written certification to the Producing Party
5 (and, if not the same person or entity, to the Designating Party) by the 60 day
6 deadline that (1) identifies (by category, where appropriate) all the Protected
7 Material that was returned or destroyed and (2) affirms that the Receiving Party
8 has not retained any copies, abstracts, compilations, summaries or any other
9 format reproducing or capturing any of the Protected Material. Notwithstanding
10 this provision, Counsel are entitled to retain an archival copy of all pleadings,
11 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
12 correspondence, deposition and trial exhibits, expert reports, attorney work
13 product, and consultant and expert work product, even if such materials contain
14 Protected Material. Any such archival copies that contain or constitute Protected
15 Material remain subject to this Protective Order as set forth in Section 4
16 (DURATION).

17 14. VIOLATION

18 Any violation of this Order may be punished by appropriate measures
19 including, without limitation, contempt proceedings and/or monetary sanctions.

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21 DATED: 10/9/2019



Alexander F. MacKinnon
United States Magistrate Judge

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 9, 2019 By: /s/ Jason A. Champion
Lynda J. Zadra-Symes
Jason A. Champion
Jacob R. Rosenbaum

Attorneys for Defendant, HYPERKIN INC.

BROWNE GEORGE ROSS LLP

Dated: October 9, 2019 By: /s/ Eric. C. Lauritsen (with permission)
Keith J. Wesley
David D. Kim
Eric C. Lauritsen
Milin Chun

Attorneys for Plaintiff, ATARI INTERACTIVE,
INC.

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of
7 California on [date] in the case of _____ [insert formal name of the case
8 and the number and initials assigned to it by the court]. I agree to comply with
9 and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I
12 will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance
14 with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print or type full name]
20 of _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection
22 with this action or any proceedings related to enforcement of this Stipulated
23 Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27
28 Signature: _____